



Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS-SC-23-0030]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Walnut Board (Board) to decrease the assessment rate established for the 2023-2024 and subsequent marketing years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be submitted to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public, and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division,

Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email:

Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Board locally administers the Order and is comprised of growers and handlers of California walnuts operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 supplements and reaffirms Executive Orders 12866 and 13563 and directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory

actions that the Office of Management and Budget (OMB) exempted from Executive Orders 12866, 13563, and 14094 review.

This proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California walnut handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable California walnuts for the 2023-2024 marketing year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would decrease the assessment rate for California walnuts handled under the Order from \$0.0125 per inshell pound, the rate that was initially established for the 2023-2024 and subsequent marketing years, to \$0.011 per inshell pound.

Section 984.68 authorizes the Board, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are familiar with the Board's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

On September 21, 2021, at the request of the Board, AMS issued a temporary moratorium on the enforcement of the Order's grading and assessment requirements as the Board considered multiple amendments to modify the Federal marketing order for California walnuts through the formal rulemaking process. On April 19 and 20, 2022, AMS held a public hearing on the proposed amendments, including a recommendation by the Board to establish an assessment rate of \$0.0125 per inshell pound of walnuts. The Board recommended the assessment rate of \$0.0125 per inshell pound to ensure the Board would have the ability to collect assessments to generate funds needed to sustain Board activities and programs moving forward. The Board determined \$0.0125 as appropriate given the available data at that time and with the understanding that a rate change may be necessary if updated market data indicates such an adjustment is necessary after the completion of the formal rulemaking. The formal rulemaking was completed when a final rule was published in the **Federal Register** on August 21, 2023 (88 FR 56745), and effective September 20, 2023, an assessment rate of \$0.0125 per inshell pound of walnuts was established.

Prior to the publication of the final rule, the Board met on June 9, 2023, and unanimously recommended 2023-2024 marketing year expenditures of \$16,811,250 and agreed to amend the 2023-2024 marketing year assessment rate to \$0.011 per inshell pound of California walnuts handled. By comparison, the 2022-2023 budgeted expenditures were \$5,275,000 and the 2021-2022 budgeted expenditures were \$18,892,500.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. The assessment rate of \$0.0125 per inshell pound of walnuts along with non-assessment revenue is sufficient to cover the upcoming marketing year's budgeted expenditures; however, during Board meetings, industry members expressed that the cost of production is greater than grower revenue and that growers are struggling. The Board then deliberated on a rate that would provide a cost relief for handlers while balancing the Board's assessment income with budgeted expenses for the 2023-24 and subsequent marketing years.

The Board ultimately recommended decreasing the assessment rate to \$0.011 per inshell pound. The proposed assessment rate of \$0.011 per inshell pound is \$0.0015 lower than the rate established by the August 21, 2023, final rule, with an effective date of September 20, 2023. The Board believes the decreased assessment rate would balance assessment income with budgeted expenditures and provide some financial relief to walnut growers after industry members expressed concern over the increasing cost of production as outpacing grower revenue, leading to tighter operating margins.

For the past two years, the Board has operated using available financial reserves to meet its expenses. The Board expects to enter the 2023-2024 marketing year with a reserve balance of approximately \$10,043,811, which is within the maximum permitted under § 984.69 of the Order of approximately two marketing years' budgeted expenses. The Board projects handler receipts of 700,000 tons (1.4 billion pounds) of assessable

California walnuts for the 2023-2024 marketing year, which is the same quantity that was projected for the 2022-2023 marketing year.

The major expenditures recommended by the Board for the 2023-2024 marketing year include \$10,588,750 for domestic marketing; \$2,472,500 for employee expenses; \$1,700,000 for production research; \$725,000 for grades and standards activities; \$585,000 for industry crop/acreage reporting; \$350,000 for office expenses; and \$390,000 for other operating expenses. For comparison, there were no Board-authorized expenses for domestic marketing for the 2022-2023 marketing year due to the moratorium. Instead, the Board authorized reserve funding during the 2022-2023 marketing year for budgeted expenses, which included \$1,894,000 for employee expenses; \$1,700,000 for production research; \$725,000 for grades and standard activities; \$184,000 for industry crop/acreage reporting; \$282,000 for office expenses; and \$284,000 for operating expenses.

The Board derived the recommended assessment rate by considering anticipated expenses, the estimated volume of assessable walnuts, and the amount of funds available in the authorized reserve. The expected 700,000 tons (1.4 billion pounds) of California walnuts from the 2023-2024 marketing year crop would generate \$15,400,000 in assessment revenue at the proposed assessment rate (1.4 billion pounds multiplied by the \$0.011 assessment rate). The remaining \$1,411,250 needed to cover budgeted expenditures would come from an approved administrative services agreement with the California Walnut Commission, which shares staff and office expenses with the Board. The income generated from assessments, along with non-assessment revenue, should be sufficient to meet the Board's estimated program expenditures of \$16,811,250.

Prior to arriving at this budget and assessment rate recommendation, the Board considered information from various sources, such as the Board's Executive Committee. The Board discussed various alternatives to its recommended action, including

maintaining the current assessment rate of \$0.0125 per inshell pound of assessable walnuts and decreasing the assessment rate by a different amount. However, the Board determined that the recommended assessment rate would be necessary to effectively achieve the Board's goals of covering budgeted expenses for the 2023-2024 marketing year and maintaining adequate funds in its financial reserve while providing a cost relief to handlers which may be passed on to growers.

This new proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or AMS. Board meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2023-2024 marketing year budget, and those for subsequent marketing years, will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or

disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 4,500 walnut growers in the production area and 80 handlers subject to regulation under the Order. Small agricultural growers of California walnuts are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$3,750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

Data from USDA's National Agricultural Statistics Service (NASS), indicate a three-year average value of utilized walnut production of \$1.069 billion for the most recent seasons for which data is available (2019-2020 through 2021-2022 marketing years). Dividing that figure by the number of walnut growers (4,400) yields an average annual crop value per grower of approximately \$243,045. This figure is well below the SBA small agricultural producer threshold of \$3,750,000 in annual sales. Assuming a normal distribution, this provides evidence that a large majority of walnut growers would likely be considered small agricultural producers according to the SBA definition. Additionally, data from NASS's 2017 Agricultural Census show that 86 percent of California farms growing walnuts at the time had walnut sales of less than \$1 million.

Based on information from the Board, approximately 70 percent of California's walnut handlers shipped assessable walnuts valued under \$34 million during the 2022-2023 marketing year and would, therefore, be considered small handlers according to the SBA definition. In light of the foregoing, it is reasonable to conclude that a substantial majority of both walnut growers and handlers would be considered small business entities according to current SBA definitions.

This proposed rule would decrease the assessment rate collected from handlers for the 2023-2024 and subsequent marketing years from \$0.0125 to \$0.011 per inshell pound

of California walnuts. Authority for this action can be found under § 984.68 of the Order. The Board unanimously recommended 2023-2024 marketing year expenditures of \$16,811,250 and an assessment rate of \$0.011 per inshell pound of California walnuts. The proposed assessment rate of \$0.011 is \$0.0015 lower than the current rate. The Board expects the industry to handle 700,000 tons (1.4 billion pounds) of California walnuts during the 2023-2024 marketing year. Thus, the \$0.011 per inshell pound assessment rate should provide \$15,400,000 in assessment income (1.4 billion pounds multiplied by \$0.011). The Board also expects to receive \$1,411,250 from an administrative services agreement with the California Walnut Commission. Income derived from these sources should be adequate to meet budgeted expenditures for the 2023-2024 marketing year.

The major expenditures recommended by the Board for the 2023-2024 marketing year include \$10,588,750 for domestic marketing, \$2,472,500 for employee expenses, \$1,700,000 for production research, \$725,000 for grades and standards activities, \$585,000 for industry crop/acreage reporting, \$350,000 for office expenses, and \$390,000 for other operating expenses. For comparison, there were no Board-authorized expenses for domestic marketing for the 2022-2023 marketing year while assessment collection was temporarily suspended. The other 2022-2023 marketing year budgeted expenses were \$1,894,000, \$1,700,000, \$725,000, \$184,000, \$282,000, and \$284,000 respectively.

The Board recommended decreasing the assessment rate in order to provide relief to California walnut growers while still generating adequate income to cover all of the Board's budgeted expenses for the 2023-2024 marketing year. Prior to arriving at this budget and assessment rate recommendation, the Board considered information from various sources and discussed various alternatives to its recommended action. These include maintaining the current assessment rate of \$0.0125 per inshell pound of

assessable walnuts and decreasing the assessment rate by a different amount. However, the Board determined that the recommended assessment rate would be necessary to effectively achieve the Board's goals of covering budgeted expenses for the 2023-2024 marketing year and maintaining adequate funds in its financial reserve. This action would maintain the Board's reserve balance at a level that the Board believes is appropriate and is compliant with the provisions of the Order.

Based upon information from NASS, the grower price reported for walnuts in the 2021 crop year was \$1,410 per ton (\$0.71 per pound). To determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate (\$0.011 per inshell pound) divided by the grower price (\$0.71 per pound) and multiply that number by 100. Therefore, estimated assessment revenue as a percentage of total grower revenue for the 2023-2024 marketing year would be about 1.5 percent.

This proposed action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Board's meetings are widely publicized throughout the production area. The California walnut industry and all interested persons are invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June 9, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB

and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide decreased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, USDA has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this proposal.

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 984 as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA.

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2023, an assessment rate of \$0.011 per inshell pound is established for California walnuts.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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